IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3741 OF 1996

Chatursing Jivansingh Davewale ..Petitioner

V/s.

Sidhamalappa Sankarappa Birajdar & ors..Respondents

Mr.A.P.Kulkarni h/f.A.A.Kumbhakoni for the petitioner
None for respondents

CORAM : R.V.MORE, J.

DATE : 20TH JUNE, 2007

P.C.

1. Heard Mr.A.P.Kulkarni h/f. A.A.Kumbhakoni for the petitioner. None appears for respondents. This Writ Petition under Article 227 of the Constitution of India takes exception to the order dated 20th December, 1995, passed by the Additional District Judge, Solapur in Civil Revision Application No.25 of 1993 whereby Civil Revision Application filed by respondents was allowed and standard rent of the suit premises was fixed @ 255/- from the date of the application i.e.from 30th November, 1982.

2. The facts of the present petition are in narrow compass. The petitioner was a tenant of the suit premises admeasuring 11.83 Sq.meters + 2.73 Sq.meters which belongs to the respondent Nos.1 to 3-landlords. The monthly rent of the suit premises was Rs.50/-. The respondent Nos.1 to 3 thereafter, desired to re-built by demolishing suit premises and therefore, they asked predecessor in title of the petitioner to vacate the suit premises for a temporary period for which predecessor in title has rightly agreed. It was agreed between the predecessor in title and respondent Nos.1 to 3-landlords that after constructing shopping complex the respondent Nos.1 to 3-landlords will give similar room to the predecessor in title on tenanted basis.

3. There is no dispute that the shopping complex was constructed in the year 1982 and the predecessor in title of the petitioner was given the same area, as agreed, in the shopping complex. The respondent Nos.1 to 3 thereafter, filed Miscellaneous Application No.396 of 1982 for

fixation of standard rent. It was contention of the respondent Nos.1 to 3-landlord that they have incurred an amount of Rs.28,787/- for construction of the shopping complex and looking to location of the suit premises & the prevailing market rate they are entitled for rent of Rs.255/- per month.

4. This application was contested by the predecessor in title of the petitioner. It was contended that before re-construction of the shopping complex he was already a tenant. It was also contended that when initially he vacated the suit premises for the purpose of re-construction, the landlords and tenant both agreed that after re-construction, the rent of the suit premises will be Rs.50/- only and, therefore, now he cannot insist for more rent.

5. The trial Court after hearing both sides disposed of the application by its order dated 31st July, 1993 and came to the conclusion that the standard rent of the suit premises would be Rs.150/- and the petitioner was directed to pay the

standard rent from the date of the order.

6. The respondent Nos.1 to 3 being aggrieved and dissatisfied preferred Civil Revision Application No.25 of 1993 in the District Court, Solapur. The learned Additional District Judge by his order dated 20th December, 1995 was pleased to allow Civil Revision Application No.25 of 1993 of the respondent Nos.1 to 3 by fixing standard rent @ Rs.255/- per month. The Lower Appellate Court has also directed the petitioner to pay standard rent from the date of the application i.e.30th November, 1982. This order is challenged in the present petition. With the help of Mr.A.P.Kulkarni, the learned counsel appearing for the petitioner, I have gone through the orders of both the lower Courts. In my considered view the impugned order deserves to be interferred with partly for the reasons stated here in after.

7. The trial Court while fixing the standard rent of the suit premises @ Rs.150/- per month took into consideration the fact that the respondent

Nos.1 to 3 have not given any details as to how they have arrived at a particular figure of the rent @ Rs.255/-. The learned trial Judge also considered the evidence of landlords at Exh.29 wherein admission was given that the predecessor in title of the petitioner was his old tenant and was paying rent @ Rs.50/-. The trial Court took the reasonable view that the respondent Nos.1 to 3-landlords are entitled for some increase in quantum of standard rent and granted increase of Rs.100/- after appreciating the evidence of the respondent Nos.1 to 3. This increase of Rs.100/- was granted as even the petitioner was also ready to pay some more rent to the respondent Nos.1 to 3 as they are running their business satisfactorily. In my opinion, therefore, the trial Court rightly fixed the standard rent of the suit premises @ Rs.150/-.

8. The Lower Appellate Court in Revision at the instance of the respondent Nos.1 to 3 increased this standard rent to Rs.255/-. After perusal of the order impugned in the petition, I am of the opinion that the Lower Appellate Court is not

justified to interfere in order of the trial Court while exercising powers U/s.29(3) of the Bombay Rent Act. The trial Court, after appreciation of the evidence on record, came to the conclusion that standard rent of the suit premises is Rs.150/- per month. The Lower Appellate Court could not have re-appreciated the evidence. It is now well settled that the revisional powers U/s.29(3) of the Bombay Rent Act can be exercised only on the grounds similar to those contained in S.115 of the Civil Procedure Code, or where there is not a fair trial, or where there is a palpable injustice, or where a question of law of general importance is involved. In this view of the matter I am of the view that the Lower Appellate Court committed error in interfering in the trial Courts' orders regarding fixation of standard rent and, therefore, that part of the order deserves to be quashed.

9. So far as the impugned order directing the petitioner to pay standard rent from the date of the application is concerned, I find no error. Admittedly, the application for fixation of

standard rent was filed in the trial Court after construction of shopping complex was completed in the year 1982. The petitioner also, in his say at Exh.25, showed his readiness and willingness to the increase in the amount of standard rent. In this view of the matter, I am of the view that the trial Court ought to have directed to pay amount of standard rent from the date of application made by the respondents i.e.with effect from 30th November, 1982. In my view, normally in case of increase in the standard rent, same ought to be granted from the date of application. The trial Court by not granting the same from the date of the application committed error on the face of the record which is corrected by the Lower Appellate Court by exercising jurisdiction U/s.29(3) of the Bombay Rent Act. I find no reason to interfere so far as this part of impugned order is concerned. In these facts and circumstances, I pass the following order.

O R D E R

A. The Writ Petition is partly allowed.

B. The impugned order is modified as follows :- The standard rent of the suit shop is fixed @ Rs.150/- (Rs.One Hundred & Fifty Only) per month as directed by the trial Court. However, the petitioner is directed to pay the same from the date of the application i.e.from 30th November, 1982.

C. The petitioner is allowed to pay the arrears of rent from 30th November, 1982 within six months from today.

D. Rule is made absolute in above terms.

E. No order as to costs.

(R.V.MORE, J.)